

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-216236.2**DATE:** April 18, 1985**MATTER OF:** Waugh Controls Corporation**DIGEST:**

1. Protest alleging improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.
2. "Equal" bid submitted in response to brand name or equal solicitation was properly rejected as nonresponsive where descriptive literature accompanying bid failed to establish that the offered item met all the IFB's salient characteristics. A blanket statement that "equal" product will be modified so that all salient characteristics are met is insufficient to permit a determination of responsiveness.
3. Protest that proposed awardee offers a product which is nonresponsive to brand name or equal procurement is denied where the protester has not shown how the product is not equal to the brand name product required by the IFB.

Waugh Controls Corporation (Waugh) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 40650-84-B-0077 issued by the Department of the Air Force for the design, manufacture, and testing of D.C. Differential Amplifier Sets. Waugh's low bid was rejected on the basis that Waugh failed to include sufficient descriptive material with its bid to establish that the amplifier sets it offered met all of the salient characteristics of the "brand name or equal" procurement. In addition to protesting the rejection of its bid, Waugh also objects to the bid submitted by the only other bidder, Pacific Instruments, Inc. (Pacific), on the basis that the amplifier sets offered by Pacific are not responsive to the solicitation.

The protest is dismissed in part and denied in part.

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The solicitation provided in part that the D.C. Amplifier Sets offered by bidders were to meet the requirements of USAF specification No. DDAC-1 for D.C. Differential Amplifier Sets. That specification provides at section 3.1.2 that the D.C. Amplifier shall be "Pacific Model 3100 as modified or equal." Specification DDAC-1 sets forth eight pages of salient characteristics with regard to such factors as signal inputs and outputs, calibration relay control, electrical performance, physical characteristics, etc. Many of these specifications, particularly in connection with electrical performance, are very precise in nature.

The IFB includes a clause requiring bidders to furnish descriptive literature with the bid in order to establish in detail the design, materials, components, performance characteristics and operation of the product offered. The clause advises that failure to provide descriptive literature which shows that the product offered conforms to the requirements of the solicitation will require rejection of the bid. The IFB also contains a brand name or equal clause which informs bidders that the evaluation of the proposed offer would be based on information provided by the bidder or identified in his bid, as well as other information reasonably available to the procuring activity.

In its bid, Waugh offered to provide the agency with its Dynamics model 7528 amplifier. Waugh included with its bid a 4-page brochure on the specifications of the Dynamics model 7528 amplifier. Waugh advised the agency in the cover letter accompanying its bid that the model 7528 would be modified to meet the solicitation's dimensional and technical specifications.

Upon evaluating Waugh's bid, the procuring activity determined that the bid was nonresponsive because Waugh's descriptive literature was insufficient to determine compliance with regard to eight areas of salient characteristics, including areas such as calibration relay, input impedance, and form factor. For example, the agency was unable to determine from the descriptive brochure provided by Waugh whether the Dynamics model 7528 met the "filtered output" requirements of the specification with regard to "settling time."

Waugh contends, in part, that the IFB improperly contains a "brand name or equal" provision on the basis that the IFB requirement for Pacific model 3100 as modified is "completely open-ended and undefined" and does not refer to a "definitive brand name." As further support for this view, Waugh states that the only other bidder, Pacific, offered Pacific model 3100-2049, an amplifier which was never before constructed and for which the specifications were not previously available publicly. Under our applicable Bid Protest Procedures, protests based on alleged improprieties in a solicitation must be filed prior to bid opening. See 4 C.F.R. § 21.2(b)(1) (1984). Since Waugh's protest of the brand name or equal provision was not filed until after the September 6, 1984, bid opening, this portion of the protest is untimely and will not be considered by our Office. See Jarrett S. Blankenship Co., B-213473, June 25, 1984, 84-1 C.P.D. ¶ 662. ✓

Waugh next asserts that its bid was responsive to the brand name or equal requirement even though it indicated in its bid cover letter that the amplifier it offered required some modifications to meet the IFB's specifications and even though its descriptive literature did not point out the necessary modifications. Waugh states that its bid was responsive as a result of the "general statement of conformance" to the IFB's specifications which it included in the cover letter accompanying its bid. ✓

To be responsive to a brand name or equal solicitation, a bid offering an equal product must contain sufficient descriptive literature to permit the contracting activity to assess whether the equal product meets all the salient characteristics specified in the solicitation. See Ruud Lighting, Inc., B-215259, Aug. 17, 1984, 84-2 C.P.D. ¶ 189. When salient characteristics are listed in terms of precise performance standards or design features, the "equal" product must meet the requirements precisely. Sound Truck Equipment, Inc., B-208071, Oct. 19, 1982, 82-2 C.P.D. ¶ 346. It is not enough that the bidder believes that his product is equal or makes a blanket statement that all salient characteristics will be met. See CNC Company, B-208703, Sept. 30, 1982, 82-2 C.P.D. ¶ 303, and Ruud Lighting, Inc., B-215259, *supra*, 84-2 C.P.D. ¶ 189 at 2. The bidder must show how any of its proposed modifications would meet the requirements of all of the salient characteristics. See Potomac Industrial Trucks, Inc., B-203119, Feb. 3, 1982, 82-1 C.P.D. ¶ 78. Since Waugh ✓

indicated that its product would have to be modified, but failed to provide sufficient information with its bid to enable the agency to determine whether the amplifier set offered meets all the salient characteristics specified in the solicitation or the manner in which the offered product will be modified, we find that the agency's rejection of Waugh's low bid as nonresponsive was proper.

Waugh also challenges the responsiveness of Pacific's bid on the basis that Pacific offered a new product, Pacific amplifier model 3100-2049, in response to the solicitation. The IFB did not require that only proven or commercially available models be offered. In this connection, Pacific has advised us that its Pacific amplifier model 3100-2049 is the model 3100 amplifier except that it includes additional performance guarantees and test procedures in order to fully comply with the IFB requirements. It is not necessary for us to decide whether the amplifier offered by Pacific is in fact a new product since Waugh's challenge of the equality of the Pacific amplifier model 3100-2049 is without merit. We have held that this argument misconstrues the purpose of the "Brand Name or Equal" clause since conformity with the IFB's salient characteristics ordinarily suffices to support the selection of an "equal" product. Bell & Howell Company, Datatype Division, B-204791, Mar. 9, 1982, 82-1 C.P.D. ¶ 219, and John Fluke Manufacturing Co. Inc., B-187588, June 6, 1977, 77-1 C.P.D. ¶ 394.

Furthermore, Waugh has not stated how the D.C. Differential Amplifier Set offered by Pacific fails to meet any of the salient characteristics of the IFB's specifications. The protester has the burden of proving its case. Elsco International, B-215664, Dec. 17, 1984, 84-2 C.P.D. ¶ 672. Unsupported allegations that a product is not an "equal" product for a brand name or equal procurement do not meet the protester's burden of presenting sufficient evidence to prove its case. TM Systems, Inc., B-214543.2, Sept. 18, 1984, 84-2 C.P.D. ¶ 313. Moreover, we have frequently held that the contracting agency is primarily responsible for determining whether an offered "equal" product meets the agency's needs as described in the salient characteristics of the IFB and, therefore, we will not disturb an agency's technical decision that a certain product meets its needs unless the protester makes a clear

showing that the agency's determination was unreasonable. See Elsco International, B-215664, supra, and cases cited therein. Waugh has made no such showing here. In the present situation, where the subject matter of the procurement is highly technical in nature, it is not enough for Waugh merely to express its disagreement with the contracting agency's technical conclusions without specifying why the agency conclusions are allegedly incorrect. See DANTEC Electronics, Inc., B-213247, Aug. 27, 1984, 84-2 C.P.D. ¶ 224. Accordingly, we conclude that Waugh has not carried its burden of proof.

We deny the protest in part and dismiss it in part.

*for Seymour Goss*  
Harry R. Van Cleve  
General Counsel